

MINUTES OF THE CITY COUNCIL

**SAN JOSE, CALIFORNIA
1995**

TUESDAY, FEBRUARY 21,

The Council of the City of San Jose convened in Regular Session at 9:30 a.m.

Present: Council Members: Diaz, Diquisto, Fernandes, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: Fiscalini (excused).

Vacant: Council District 10

Upon motion unanimously adopted, Council recessed to a Closed Session at 9:35 a.m. in Room 600 to (1) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) pertaining to the case of Callaway v. City of San Jose; (2) to confer with Legal Counsel regarding anticipated litigation pertaining to significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 of the Government Code, to discuss one matter; and to consider one matter regarding initiation of litigation pursuant to subdivision (c) of Section 54956.9 of the Government Code; and (3) to confer with Labor Negotiator pursuant to Government Code Section. 54957.6, City Negotiator, City Attorney Joan R. Gallo, regarding San Jose Police Officers' Association Employee Organization.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:45 a.m. and reconvened at 1:40 p.m. in Council Chambers, City Hall.

Present: Council Members: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, (arrived at 1:45 p.m.), Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: None.

Vacant: Council District 10

INVOCATION

Students of Martin Murphy Middle School's United Colors Dance and Drill Team, under the direction of Linda Ross, Advisor, performed two routines. (District 2)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Powers, seconded by Council Member Fernandes and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 10-0-0-0-1. Vacant: District 10.

CEREMONIAL ITEMS

- 5a Presentation of commendation and award honoring the Outstanding Employee for February 1995 to Michelle L. Wang, Business Office, Main Library. (City Manager's Office)**

Documents filed: None.

Discussion/Action: City Manager Williams introduced Alan Decker, the honoree's immediate supervisor, acknowledged City Librarian Jim Fish, and presented the award and the plaque to Michelle in recognition of outstanding service to the City. On behalf of the City Council, Mayor Hammer presented the commendation to the employee and extended congratulations.

- 5b Presentation to the City, from Transportation Displays, Inc. , of 100 tickets for Walt Disney on Ice. (Mayor)
(Orders of the Day 4a)**

Documents filed: None.

Discussion/Action: Mayor Hammer introduced Barbara Persigian, Director of Business Development for Transportation Displays, Inc. who presented to the City of San Jose 100 tickets for the Aladdin performance at the Arena. In addition, Mayor Hammer expressed the City's appreciation for TDI's generosity in donating 100 posters to be placed on City transportation vehicles or used as an advertisement technique, and thanked TDI for publishing a hotline number to aid youth needing emergency assistance.

CONSENT CALENDAR

Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Consent Calendar was approved and the below listed items taken as indicated. Vote: 10-0-0-0-1. Vacant: District 10.

Minutes for Approval

6a(1) Regular Meeting of November 29, 1994

Documents filed: Minutes of November 29, 1995.

Discussion/Action: The minutes were approved. Vote: 10-0-0-0-1. Vacant: District 10.

Ordinances for Final Adoption

6b(1) **ORD. NO. 24807 - Amends Chapter 3.28 of Title 3 of the San Jose Municipal Code by amending Sections 3.28.610, 3.28.680, and 3.28.1420 and adding Section 3.28.685 to provide Federated service credit for those members of the Federated City Employees Retirement System on leave of absence without compensation during City Hall Closures.**

Documents filed: Proof of publication of title of Ordinance No. 24807 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24807 was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

6b(2) **ORD. NO. 24808 - Adds a new Chapter 14.15 to Title 14 of the San Jose Municipal Code to provide alternative procedures for maintenance districts.**

Documents filed: Proof of publication of title of Ordinance No. 24808 submitted by the City Clerk

Discussion/Action: Ordinance No. 24808 was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

- 6b(3) ORD. NO. 24809 - Approves, authorizes, and directs execution of one or more project leases in connection with The Hayes Mansion Improvement Project Financing.**

Documents filed: Proof of publication of title of Ordinance No. 24809 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24809 was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

- 6b(4) ORD. NO. 24810 - Rezones certain real property situate on the west side of Edenvale Avenue, 1,200 feet northerly of Chynoweth Avenue. PDCSH 94-11-051**

Documents filed: Proof of publication of title of Ordinance No. 24810 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24810 was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

- 6b(5) ORD. NO. 24811 - Rezones certain real property situate on the west side of Stallion Way, 150 feet southerly of Staghorn Lane. C 94-05-020**

Documents filed: Proof of publication of title of Ordinance No. 24811 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24811 was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

- 6b(6) ORD. NO. 24812 - Rezones certain real property situate on the southwest corner of Blossom Hill Road and Santa Teresa Boulevard. C 94-10-042**

Documents filed: Proof of publication of title of Ordinance No. 24812 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24812 was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

- 6b(7) ORD. NO. 24813 - Rezones certain real property situate on the east side of North Seventh Street, 365 feet northerly of East Hedding Street. C 94-10-043**

Documents filed: Proof of publication of title of Ordinance No. 24813 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24813 was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

Plans and Specifications

- 6d(1) TRACT NO. 8689 - South side of The Villages Parkway at Cribari Lane, 300 feet easterly of The Villages Fairway Drive - Sunrise Limited Partnership formed pursuant to the Laws of State of Illinois and doing business in the State of California as S Limited Partnership, by UDC Advisory Services, Inc., an Illinois Corporation, General partner (Developers) - 22 condominium units. Adoption of resolutions approving the plans, the final map, and the contract for Tract No. 8689. CEQA: ND. District 8. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 13, 1995, recommending Council adopt said resolutions.

Discussion/Action: This item was dropped from the Agenda.

- 6d(2) TRACT NO. 8697 - San Fernando Street and Twenty Fourth Street - Green Valley Corporation, a California Corporation, doing business as Barry Swenson Builder (Developer) - 51 townhouse units and 3 common ownership lots. Adoption of resolutions approving the plans, final map, and contract for Tract No. 8697. CEQA: ND. District 3. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 13, 1995, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 65739, entitled: "A Resolution of the Council of the City of San Jose Fixing Official Curb Grades and Position of Curbs, and Adopting Plans for Tract No. 8697"; Resolution No. 65740, entitled: "A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 8697", and Resolution No. 65741, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8697, were adopted. Vote: 10-0-0-0-1. Vacant: District 10.

- 6d(3) TRACT NO. 8720 - Hillsdale Avenue and Vistapark Drive - Greystone Homes, Inc., a Delaware Corporation qualified to do business in the State of California - 78 single family attached units. Adoption of resolutions approving the plans, final map, and contract for Tract No. 8720. CEQA: Resolution No. 64433. District 7. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 13, 1995, recommending Council adopt said resolutions.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 65742, entitled: "A Resolution of the Council of the City of San Jose Fixing Official Curb Grades and Position of Curbs, and Adopting Plans for Tract No. 8720 for Condominium Purposes"; Resolution No. 65743, entitled: "A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 8720", and Resolution No. 65744, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8720 for Condominium Purposes", were adopted. Vote: 10-0-0-1. Vacant: District 10.

Contracts/Agreements

- 6e(1) Approval of award of open purchase orders for supplies, materials, equipment and services for FY 1994-95 #12, and authorization for the Director of General Services to execute the purchase orders. (General Services)**

Documents filed: Memorandum from Acting Director of General Services, Ellis M. Jones, Jr., dated February 3, 1995, recommending Council approve award of open purchase orders list, and authorize the Director of General Services to execute the purchase orders.

Discussion/Action: The award of open purchase orders List #12 for FY 1994-95 was approved and execution of the purchaser orders authorized. Vote: 10-0-0-1. Vacant: District 10.

- 6e(2) Report on bids and award of contract for the Construction of Wheelchair Ramps 1994-95 to the low bidder. CEQA: Exempt. (Public Works)**

Documents filed: None.

Discussion/Action: This item was deferred to March 7, 1995.

- 6e(3) Approval of award of an open purchase order with Mission Trail Garbage Company for the collection and disposal of grit and screening at the Water Pollution Control Plant in the additional encumbrance of \$65,000 for a total amount of \$140,000, and authorization for the Director of General Services to execute the purchase order. (General Services)
[Deferred from 2/14/95 - Item 6e(3)]
This item renumbered to Item 9i.**

Documents filed: None.

Discussion/Action: See Item 9i for Council action taken.

- 6e(4) Adoption of a resolution authorizing the Director of Aviation to negotiate and execute:**
- (a) A continuation agreement with Ogden Ground Services, Inc., for the leasing of office space in Terminal C at San Jose International Airport for a five (5) year term beginning February 28, 1995 to January 31, 2000, and is subject to cancellation upon thirty (30) days notice, with annual revenue to the City of \$11,676.**
 - (b) A commercial operation permit with Ogden Ground Services, Inc., for providing ground handling services at San Jose International Airport for a five (5) year term beginning February 28, 1995 to February 28, 2000, and is subject to cancellation upon thirty (30) days notice, with annual revenue to the City of \$194,000.**

CEQA: Exempt. (Airport)

Documents filed: Memorandum from Airport Director, Ralph G. Tonseth, dated February 10, 1995, recommending Council approve said continuation agreement and permit with Ogden Ground Services, Inc.

Discussion/Action: Resolution No. 65745, entitled: "A Resolution of the Council of the City of San Jose Authorizing the Director of Aviation to Negotiate and Execute a Continuation Agreement to a Lease with Ogden Ground Services, Inc. and a Commercial Operation Permit with Ogden Ground Services, Inc. to Conduct Ground Handling Services at San Jose International Airport", was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

6e(5) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1994-95 #13, and authorization for the Director of General Services to execute the purchase orders. (General Services)

Documents filed: Memorandum from Acting Director of General Services, Ellis M. Jones, Jr., dated February 10, 1995, recommending Council approve award of open purchase orders list, and authorize the Director of General Services to execute the purchase orders.

Discussion/Action: The award of open purchase orders List #13 for FY 1994-95 was approved and execution of the purchase orders authorized. Vote: 10-0-0-1. Vacant: District 10.

Routine Legislation

6f(1) Adoption of a resolution authorizing the City Manager to submit a grant application to the California Integrated Waste Management Board (CIWMB) for used oil collection program costs in the amount of \$130,220 and to accept the grant if awarded and to execute all related documents. (Environmental Services)

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated February 3, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65746, entitled: "A Resolution of the Council of the City of San Jose Authorizing the City Manager to Submit an Application for Grant Funds from the Used Oil Recycling Fund Under the California Oil Recycling Enhancement Act for the Curbside Used Oil Recycling Program and Authorizing the City Manager to Accept the Grant Funds and Execute Documents Necessary to Implement the Grant", was adopted. Vote: 10-0-0-1. Vacant: District 10.

6f(2) Adoption of a resolution to amend:

- (a) Resolution No. 51872, Exhibit 21, to create the class of Financial Analyst (1228) at a salary range of 60G.**
- (b) Resolution No. 51872, Exhibit 21, to revise the salary for the class of Senior Retirement Officer (1437) from salary range of 63B to salary range of 63G.**
- (c) Resolution No. 64966, Exhibit 05, to create the classes of Departmental Systems Network Coordinator I (1390) (F/T) at a salary range of 52F and Departmental Systems Network Coordinator I (1391) (P/T) at a salary range of 52F.**

6f(2) (Cont'd.)

- (d) Resolution No. 64966, Exhibit 05, to revise and retitle the classes of Departmental System Network Coordinator (1392) (F/T) to Departmental Systems Network Coordinator II (1392) (F/T) and Departmental System Network Coordinator (1393) (P/T) to Departmental Systems Network Coordinator II (1393) (P/T) at no change in salary.
(Human Resources)**

Documents filed: Memorandum from Director of Human Resources, Nona Tobin, dated February 3, 1995, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 65747, entitled: "A Resolution of the Council of the City of San Jose Amending Resolution No. 51872 to Amend Exhibit 21 to (1) Create the Class of Financial Analyst (1228) Effective February 26, 1995, and (2) Revise the Salary for the Class of Senior Retirement Officer (1437) from Salary Range of 63B to Salary Range of 63G Effective Retroactive to July 3, 1994"; and Resolution No. 65748, entitled: "A Resolution of the Council of the City of San Jose Amending Resolution No. 64966 Amending Exhibit 1 of the Memorandum of Agreement Between the City of San Jose and Municipal Employees Federation (AFSCME) Local 101, Unit 5 (Administrative, Technical, Clerical and Custodial Employees) to (1) Create the Classes of Departmental Systems Network Coordinator I (1390) (F/T) and Departmental Systems Network Coordinator I (1391) (P/T) at a Salary Range of 52F, and (2) Revise and Retitle the Classes of Departmental System Network Coordinator (1392) (F/T) to Departmental Systems Network Coordinator II (1392) (F/T) and Departmental System Network Coordinator (1393) (P/T) to Departmental Systems Network Coordinator II (1393) (P/T), Effective February 26, 1995", were adopted. Vote: 10-0-0-0-1. Vacant: District 10.

6f(3) Approval of Quarterly Report of Economic Development Activity, October 1, 1994 – December 31, 1994. (Office of Economic Development)

Documents filed: Memorandum from Senior Deputy City Manager, Darrell Dearborn, dated February 3, 1995, transmitting the report providing Council with measurements of activity and accomplishments of the City's economic development efforts.

Discussion/Action: Council Member Fiscalini commended the Administration on the thorough report on economic development activity in San Jose, but asked Staff to consider establishing goals for each category and to include measurement by objective in future reporting. Assistant Director of Economic Development, Pamela Stone, stated

6f(3) (Cont'd.)

the Administration has not established numerical goals against which to measure progress of activities, but that the current report contains four performance categories reflecting the objectives of the Economic Development Agenda approved by the City Council in January, 1993. She stated the level of activity is quantifiable, however, the level of job retention or revenue projections associated with those jobs would be difficult to quantify. Council Member Fiscalini agreed that in some areas the Department could establish measurable goals as a framework for future reports, and that he would work with Staff in that process. William J. Garbett opposed approval of this item. The Economic Development Activity Report for Quarter ending December 31, 1994 was approved. Vote: 10-0-0-0-1. Vacant: District 10.

6f(4) Adoption of a resolution authorizing the reorganization of territory designated as Story No. 50 which involves the annexation to the City of San Jose of 27.8 acres of land, located on the northeast corner of Rosemar Avenue and Juliet Avenue, and the detachment of the same from the Central Fire District. CEQA: ND. Director of Planning recommends approval. No Planning Commission action required. (Planning)

Documents filed: Memorandum from Director of Planning, Gary J. Schoennauer, dated February 3, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65749, entitled: "Resolution of the Council of the City of San Jose Ordering the Reorganization of Certain Uninhabited Territory Designated as Story No. 50 Subject to Liability for General Indebtedness of the City", was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

6f(5) Adoption of a resolution summarily vacating portions of West St. John Street between North Montgomery Street and the Southern Pacific Railroad right-of-way and North Montgomery Street between West Santa Clara and West St. John Streets. CEQA: Resolution No. 60199. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 3, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65750, entitled: "Resolution of the Council of the City of San Jose Summarily Vacating Portions of West St. John and North Montgomery Street, was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

- 6f(6) Adoption of a resolution authorizing the City Manager to submit two (2) grant applications to the California Arts Council (CAC) to support multicultural arts development activities in the amounts of \$50,000 and \$25,000, and to accept the grants if awarded, and to execute all related documents. (Convention, Cultural and Visitor Services)**

Documents filed: Memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated February 10, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65751, entitled: "A Resolution of the Council of the City of San Jose Authorizing the City Manager to Submit Two Grant Applications to the California Arts Council for Fiscal Year 1995-96 and to Accept the Grants if Awarded", was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

- 6f(7) Adoption of a resolution authorizing the City Manager to submit a grant application to the United States Department of Justice for the COPS AHEAD Policing Hiring Program, and to accept the grant if awarded and execute all related documents. (City Manager's Office)
(Orders of the Day 4b)**

Documents filed: Memorandum from City Manager, Regina V.K. Williams, dated February 17, 1995, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 65752, entitled: "A Resolution of the Council of the City of San Jose Authorizing the City Manager to Execute and Submit an Application to the U.S. Department of Justice for a Grant for the COPS AHEAD Police Hiring Program, to Accept the Grant if Awarded, and to Execute All Related Documents", was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - February 8, 1995

Documents filed: Rules Committee Report of February 8, 1995.

- (1) Review of February 21 Council Agenda

The Committee recommended approval of the February 21 Council Agenda.

- (2) Add new items to February 14 Amended Council Agenda

The Committee recommended no changes or additions to the February 14 Amended Council Agenda.

- (3) The Public Record: January 25-31, 1995. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated February 2, 1995, listing items transmitted to the Administration and items filed for the Public Record for the period January 25-31, 1995. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated February 8, 1995, summarizing actions taken on the items transmitted to the Administration for the period January 25-31, 1995.

The Committee recommended approval of the Public Record.

- (4) Response to Parks and Recreation Commission's request regarding adjustment to terms

The Committee deferred this item to February 15, 1995 Rules Committee meeting.

- (5) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee

- (a) Request to refer "back billing" of Recycle Plus! customers to the Finance Committee

The Committee referred to the Finance Committee the discussion of "back billing" of Recycle Plus! customers.

7b Report of the Rules Committee - February 8, 1995 - (Cont'd.)

- (6) City Council and Rules Committee Meeting Schedules. Attachment: Memorandum from Assistant to the City Manager, Nina S. Grayson, dated February 8, 1995, recommending six changes to the FY 1995-96 Budget Calendar.

The Committee approved the following changes to the FY 1995-96 Budget Calendar:

- a. Move the February 13, 1995 FY 1994-95 Mid-Year Operating and Capital Budget Review COW to Thursday, February 16, 1995 at 9:00 a.m.
- b. Move the February 16, 1995 FY 1994-95 Budget Strategies and Project Innovation Update COW to Thursday, March 9, 1995 at 9:00 a.m.
- c. Move the release of the Mayor's FY 1995-96 Budget Direction Message from March 2, 1995 to March 22, 1995.
- d. Move the March 9, 1995 Mayor's FY 1995-96 Budget Direction Message COW to Thursday, March 30, 1995.
- e. Move the March 9, 1995 Public Hearing/Mayor's FY 1995-96 Budget Direction Message COW to Thursday Evening, March 30, 1995.
- f. Move the March 14, 1995 Council Amends/Approves Mayor's FY 1995-96 Budget Direction Message to Tuesday, April 4, 1995.

- (7) Oral Communications

None presented.

- (8) Adjournment

The meeting adjourned at 2:40 p.m.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Woody and unanimously carried, the Rules Committee report and actions of February 8, 1995 were accepted. Vote: 10-0-0-0-1. Vacant: District 10.

7c Report of the Housing and Community Services Committee - February 6, 1995

Documents filed: Housing and Community Services Committee Report of February 6, 1995.

- (1) Committee Orientation. Attachment: Agenda for the Housing and Community Services Committee Orientation.

Statements of individual department core services and mission statements were provided by CCVS, Housing, Fire Department, Public Works, Library, and Streets and Parks.

- (2) Consent Calendar. Attachments: (1) Memorandum from Director of Housing, Alex Sanchez, dated January 17, 1995, reporting on activity during the second quarter of the 1994-95 fiscal year in the Housing Rehabilitation Program.
(2) Memorandum from Director of Housing, Alex Sanchez, dated January 27, 1994, submitting the Report for the second quarter of the 1994-95 Fiscal Year.
 - (a) Housing Rehabilitation Program Quarterly Report..
 - (b) Housing Development Quarterly Report.

The Committee accepted the reports and approved the Consent Calendar.

- (3) Housing Department Report on Inclusionary Zoning. Attachment: (1) Memorandum from Director of Housing, Alex Sanchez, dated January 24, 1995, recommending Council not pursue an Inclusionary Zoning Program for San Jose. (2) Memorandum from Housing Advisory Commission, dated February 14, 1995, recommending that a 15% inclusionary zoning program, akin to the inclusionary requirements of the California Redevelopment Law for redevelopment project areas, be implemented Citywide.

The Committee unanimously recommended to Council not to pursue a formal inclusionary housing program.

- (4) Planning & Building Status Report on the Neighborhood Revitalization Strategy (NRS). Attachment: Memorandum from Director of Neighborhood Services, George Penn; Director of Housing, Alex Sanchez; and Director of Planning, Gary Schoennauer, dated February 1, 1995, transmitting the referenced Status Report.

The Committee unanimously accepted the staff report and referred to the FY 1995-96 budget process the funding proposal.

7c Report of the Housing and Community Services Committee - February 6, 1995 - (Cont'd.)

- (5) Status Report on Renaissance Pleasure Faire. Attachment: Memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated January 24, 1995, providing a status report regarding the City's work with Renaissance Pleasure Faires, Inc. in assessing the viability of producing a Renaissance Pleasure Faire in Kelley Park.

The Committee unanimously accepted the report.

- (6) Family Camp Annual Report. Attachment: Memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated January 25, 1995, recommending acceptance of the report and adjustments to the existing fee structure to operate the Camp in 1995 on a direct cost recovery basis, and continuation of the Campership program with a goal of \$5,000 in 1995.

The Committee unanimously recommended that Council (a) approve the 1994 Family Camp report; (b) approve adjustments to the existing fee structure to operate the Camp in 1995 on a direct cost recovery basis; and (c) approve continuation of the Campership program with a goal of \$5,000 in 1995. The Committee recommended that Staff come back to Committee with a report on ways to increase camperships, recommendations of how the City can increase support to Friends of Family Camp, and how the Family Camp can operate more like an enterprise fund.

See Item 9g for Council action taken on this item.

- (7) Development of a Cultural Plan for San Jose. Attachment: Memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated December 19, 1995, recommending the development of a cultural plan for San Jose.

The Committee recommended that Council (a) approve the Arts Commission recommendation to allocate up to \$75,000 in available one-time TOT funds to engage a consultant team to develop a five-year cultural plan for the City of San Jose; and (b) to approve the Arts Commission recommendation to allocate up to \$30,000 in available TOT (General Fund) funds to support the first six months of a temporary, 30-month contractual position (Arts Planning and Development Officer) to provide administrative support for the development of the cultural plan and the monitoring of the City's interest in the new facilities being developed by the Redevelopment Agency. Noes: Pandori.

7c Report of the Housing and Community Services Committee - February 6, 1995 - (Cont'd.)

- (8) Cultural Facilities O&M Report Preliminary Recommendations. Attachments: Memoranda from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated December 19, 1994 and January 31, 1995, making recommendations related to a Cultural Facilities Operations and Maintenance Policy.

The Committee accepted the report and directed Staff to incorporate development of a funding policy for cultural facilities operations and maintenance into the new cultural plan for San Jose, and that the funding policy should be based on the four policy principles and the three primary policy criteria addressed in the report. Noes: Pandori.

- (9) Report on Teen Centers Expanded Program. Attachment: Memorandum from Director of Neighborhood Services, George Penn, dated January 13, 1995, providing evaluation of usage of teen center.

The Committee unanimously accepted the report.

- (10) Neighborhood Services One Year Review of Vacant House Ordinance. Attachment: Memorandum from Director of Neighborhood Services, George Penn, dated January 26, 1995, providing a one-year review on implementation of the ordinance, and addressing specific concerns outlined therein.

The Committee unanimously accepted the report and scheduled for the March H&CSC meeting the discussion of Unattended and Neglected Housing Program.

- (11) Committee Meeting Schedule and Work Plan Updates. Attachment: Memorandum from Director of Housing, Alex Sanchez, dated January 26, 1995, providing Work Plan Updates.

The Committee accepted the Draft Work Plan with the acknowledgment of deferrals and the understanding that the Work Plan is a changing Plan.

- (12) Approval of Work Plan to Implement Library Benefit Assessment District

This item was heard by the City Council on February 14, 1995.

- (13) Oral Petitions

None were presented.

7c Report of the Housing and Community Services Committee - February 6, 1995 - (Cont'd.)

(14) Adjournment

The meeting adjourned at 4:15 p.m.

Discussion/Action: Regarding his vote in opposition to actions recommended in Items 7c(7) and 7c(8) and the development of a cultural plan for San Jose, Council Member Pandori stated his primary concerns pertain to the allocation of \$75,000 in available one-time TOT funds to engage the consultant team to develop the Plan, and secondly, that the development status of new cultural facilities for the arts as budgeted in the Capital Budget will change. He stated the language in the report noting the creation of competition between facilities for available artistic product is contrary to past budget discussions, and that any decisions regarding allocation of these funds should be postponed, given constraints of the Redevelopment Agency Budget and competing priorities involving the City's Operating Budget. Vice Mayor Johnson reiterated her comments in support of a theater utilization study to determine the need for and the number and artistic users of the theaters, and noted the proposed Plan provides the opportunity to begin that process. She underscored the necessity for the Administration to reassess arts studies conducted in prior years, determine what can be accomplished for the community, and remain committed to realistic expectations in the development of a new cultural facility. Upon motion by Council Member Powers, seconded by Council Member Shirakawa and unanimously carried, the Housing and Community Services Committee report and actions of the February 6, 1995 were accepted with Item 7c(6) acted upon at Item 9g. Vote: 10-0-0-0-1. Vacant: District 10.

7d Report of the Finance Committee - February 8, 1995

Documents filed: Finance Committee Report of February 8, 1995.

(1) Oral Petitions

Gerald Norve requested the scheduling on the Finance Committee Agenda a report on Citywide Overtime. Director of Finance to provide Mr. Norve with a copy of the last Citywide Overtime Report issued in September 1994.

7d Report of the Finance Committee - February 8, 1995 - (Cont'd.)

- (2) Monthly Investment Report for December 1994. Attachment: December 1994 Investment Report
- (3) Internal Investment Committee Minutes (January 1995). Attachment: Memorandum from Finance Director, John V. Guthrie, dated January 20, 1995, transmitting minutes of the January 1995 Internal Investment Committee meeting.

The Committee accepted the Monthly Investment Report for December 1994 (Item 7d(2), and the Internal Investment Committee Minutes for January 1995 (Item 7d(3).

- (4) Hayes Mansion Phase II Bond Financing Approval. Attachment: Memorandum from Finance Director, John V. Guthrie, dated February 3, 1995, providing the Staff recommendation for the financing plan for the Hayes Mansion Phase II Improvement Project, as contained therein.

The Committee approved Staff recommendation to approve the financing plan for the Hayes Mansion Phase II Improvement Project and recommended Council (a) adopt a resolution approving, authorizing and directing the execution of certain financing documents and directing certain related actions in connection with the Hayes Mansion Improvement Project financing, including approval of the underwriting team of Lehman Bros. and Artemis Capital Group, Inc. for the issuance of variable rate debt; and (b) that the City of San Jose Financing Authority adopt a resolution authorizing the issuance of one or more series of lease revenue bonds in the initial aggregate principal amount in connection with financing certain public capital improvements, authorizing and directing the execution of one or more trust agreements and certain lease documents, authorizing the Treasurer of the City of San Jose Financing Authority to negotiate the sale of bonds, approving an official statement, and authorizing other related actions.

- (5) Direction to Move Forward with Other Cities to Develop a Golden Triangle Fiber Optics RFP. Attachment: Memorandum from Assistant Director of Economic Development, Pamela K. Stone, dated January 30, 1995, making recommendations for development of the referenced RFP as contained therein.

The Committee recommended approval of the direction of the Telecommunications Working Group to work with the cities of Santa Clara and Milpitas to identify the level of effort, costs, and sources of funding necessary to develop and issue a RFP to the telecommunications industry for development of the Golden Triangle Fiber Optic Network.

7d Report of the Finance Committee - February 8, 1995 - (Cont'd.)

- (6) Direction to Amend Utility Users Tax Ordinance. Attachment: Memorandum from City Attorney Joan R. Gallo, dated February 1, 1995, commenting on the Telecommunications Task Force recommendations regarding utility users tax.

The Committee recommended that the City Attorney's Office be directed to draft an ordinance to encompass coverage of telecommunications items that are not now included in the Utility Users Tax Ordinance. Noes: Diquisto.

The City Council accepted Committee action as modified to postpone the referral of this item to the City Attorney to allow for a comprehensive review of revenues, services and the results of the work of the Telecommunications Task Force, and for the City Attorney to work with industry representatives in exploring available options and alternatives and to report back to Council for further direction.

- (7) Committee Schedule

The next Finance Committee meeting is scheduled for February 22, 1995 at 10:00 a.m. Director of Finance John V. Guthrie reiterated the request from the City Manager that the Committee discuss within the next two months the Bid Process versus the RFP process.

- (8) Adjournment

The meeting adjourned at 11:20 a.m.

Discussion/Action: Regarding Item 7d(6) and his vote opposing the Committee recommended action, Council Member Diquisto stated the Administration failed to contact manufacturing groups, hotels industry, and the business community for their comments regarding the impacts of the Utility Users Tax amendments on their firms. Upon motion by Council Member Woody, seconded by Council Member Fiscalini and unanimously carried, the Finance Committee report and actions of February 8, 1995 were accepted as modified in Item 7d(6). Vote: 10-0-0-0-1. Vacant: District 10.

**7e Report of the Transportation, Development, and Environment Committee -
February 9, 1995 - (Cont'd.)**

Documents filed: Transportation, Development, and Environment Committee Report of February 9, 1995.

- (1) Consent Calendar. Attachments: (1) Status reports for January 1995 on the Peninsula Corridor and the Pullman Way Maintenance Facility projects.
(2) Memorandum from City Attorney Joan R. Gallo, dated February 7, 1995, reporting the status of the request from the Transit District for advertising on bus shelters.
 - (a) Peninsula Corridor Status Report
 - (b) Pullman Way Maintenance Facility Status Report
 - (c) Santa Clara County Transit District's Request for Advertisement on Bus Shelters

The Committee accepted the status reports and approved the Consent Calendar.

- (2) Report on Fiscal Year 1994-95 Household Hazardous Waste Mid-Year Review. Attachment: Memorandum from Director of Environmental Services, Louis N. Garcia, dated January 26, 1995, providing said FY 1994-95 Mid-Year Review.

The Committee accepted the status report with direction to Staff to report back to the Committee with an update on improving the program by exploring other options.

- (3) Report and Recommendation Regarding Tasman Corridor Revised Vehicle Accessibility Plan to Meet Americans with Disabilities Act Requirements. Attachments: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 6, 1995, recommending support of the Santa Clara County Transit District's Minimum Cost Alternative Plan for the Tasman Corridor. (2) Correspondence from the Outreach Education & Access Committee of the Disability Advisory Commission, dated February 8, 1995, making recommendations regarding Retrofit of the Guadalupe Corridor Light Rail Station, and the Revised Vehicle Accessibility Plan. (3) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 9, 1995, submitting copies of the Americans With Disabilities Act (ADA) Compliance Measurements and Transportation Accessibility Guide, which was referenced by Mr. Tamiz of the Disability Commission at the TD&E Committee meeting.

**7e Report of the Transportation, Development, and Environment Committee -
February 9, 1995 - (Cont'd.)**

- (3) Report and Recommendation Regarding Tasman Corridor Revised Vehicle Accessibility Plan to Meet Americans with Disabilities Act Requirements. (Cont'd.)

The Committee accepted the recommendations (a) to comply with the Americans With Disabilities Act and Vehicle Accessibility Plan, and (b) to request that the TD&E Committee address the issue of emergency evacuation procedures on both old and new LRT vehicles as identified under the Vehicle Accessibility Plan.

- (4) Oral Petitions

None presented.

- (5) Adjournment

The meeting adjourned at 2:45 p.m.

Discussion/Action: Vice Mayor Johnson requested that the record reflect an excused absence during the Committee meeting. Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, the Transportation, Development, and Environment Committee report and actions of February 9, 1995 were accepted. Vote: 10-0-0-0-1. Vacant: District 10.

GENERAL GOVERNMENT

- 9a Approval of an amendment to the Master Agreements with the City of Santa Clara, City of Milpitas, West Valley Sanitation District, Cupertino Sanitary District, County Sanitation District 2-3, Burbank Sanitary District, and Sunol Sanitary District, and for all parties to approve and execute to confirm the cost allocation for the South Bay Water Recycling Project (SBWRP). (Environmental Services)
(Deferred from 1/24/95 - Item 9b)**

Documents filed: None.

Discussion/Action: This item was deferred to March 7, 1995.

- 9d Report on bids and award of contract for the construction project entitled, "San Jose/Santa Clara Water Pollution Control Plant, Structural Rehabilitation, Digester Domes," to the low bidder, Anderson Pacific Engineering Construction, Incorporated, in the amount of \$838,000. CEQA: Exempt. (Environmental Services)**

Documents filed: None.

Discussion/Action: This item was dropped from the agenda.

- 9e Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Towill, Inc. for professional land surveying services for the South Bay Water Recycling Project, in an amount not to exceed \$934,112, and for additional services in an amount not to exceed \$286,438, for a total amount not to exceed \$1,220,550. (Environmental Services)
(Deferred from 2/14/95 - Item 9b)**

Documents filed: (1) Memorandum from Director of Environmental Services, Louis N. Garcia, dated February 17, 1995, recommending award of said contract to the low bidder, Anderson Pacific Engineering Construction, Inc. (2) Memorandum from Director of Affirmative Action/Contract Compliance, Steven T. Wing, dated February 17, 1995, stating the Office of Contract Compliance concurs with said award. (3) Letter from the Treatment Plant Advisory Committee, dated February 10, 1995, concurring with the recommended award.

Discussion/Action: Council Member Diquisto stated the Staff report on this item was delivered this morning to his Office, which did not allow sufficient time for review; as a result, he urged Council to defer action on this item. Director of Environmental Services, Louis N. Garcia, stated the City's competitive selection process has been completed and Towell, Inc. received top rank of the four firms and was recommended to provide the specified services of the Selection Committee. He explained the reason for the last-minute distribution of the report and how subsequent delays will create technical problems negatively impacting the schedule for the South Bay Water Recycling Project. Noting the award of contract has been approved by the Treatment Plant Advisory Committee, he urged Council to approve the agreement with Towill, Inc. Given Staff's explanation of whether Council is legally prohibited from making any decision regarding application of local preference, City Attorney, Joan R. Gallo, stated the City Council approved a *local preference policy* which exempts Water Pollution Control Plant professional engineering contracts, because the Control Plant serves as a multi-agency organization. She stated the City's local preference policy is utilized as a tie breaker in determining award of certain contracts. Council Member Pandori requested, as a

9e (Cont'd.)

separate issue, that the Administration consider a policy change to further define *local preference* with broader definitions than that already used, and to refer that issue to the Treatment Plant Advisory Committee for discussion involving future contracts. Regarding the City's Qualifications Based Selection Process (QBS) and contract amounts, Council Member Pandori stated the Congestion Management Agency will negotiate a contract amount as part of the selection process and, in his opinion, contract amounts of this magnitude must be a legitimate part of the criteria which Staff should consider in recommending the award. Given the discussion related to policy questions and concerns, the consensus of the City Council was to direct the Administration to schedule a working session to discuss RFQs, RFPs, QBSs, contracts and related issues. Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and carried, Resolution No. 65753, entitled: "A Resolution of the Council of the City of San Jose Delegating to the City Manager the Authority to Negotiate and Execute a Consultant Agreement with Towill Associates for Professional Land Surveying Services for the South Bay Water Recycling Project in an Amount Not to Exceed \$1,220,550", was adopted. Vote: 6-4-0-0-1. Noes: Diaz, Diquisto, Fiscali, Pandori. Vacant: District 10

Council Member Shirakawa left the Council Chambers at this point in the meeting.

The Financing Authority convened at 2:50 p.m. in Joint Session with the City Council to consider Items 9f and SJFA 2.

9f Adoption of a resolution approving, authorizing and directing the execution of certain financing documents and directing certain related actions in connection with the Hayes Mansion Improvement Project financing, including the approval of the underwriting team of Lehman Brothers and Artemis Capital Group, Inc. for the issuance of variable rate debt.

[Finance Committee referral 2/8/95 - Item 7d(4)]

(Deferred from 2/14/95 - Item 9e)

2 Adoption of a resolution authorizing the issuance of one or more series of lease revenue bonds (taxable and tax-exempt) in the initial aggregate principal amount not to exceed \$27.5 million in connection with financing certain public capital improvements, authorizing and directing the execution of one or more trust agreements and certain lease documents, authorizing the Treasurer of the City of San Jose Financing Authority to negotiate the sale of bonds, approving an official statement, and authorizing other related actions.

(Deferred from 2/14/95 - Item 2)

9f and SJFA 2 - (Cont'd.)

Documents filed: (1) See Finance Committee Report of February 8, 1995, Item 7d(4). (2) Memorandum from Finance Director, John V. Guthrie, dated February 13, 1995, recommending adoption of said resolutions.

Discussion/Action: Director of Finance, John V. Guthrie, reviewed background information pertaining to the financing plan and structure for the Hayes Mansion Phase II Improvement Project, and highlighted the selection process which involved six firms. He stated the creation of the Hayes Mansion Trust Fund is intended to safeguard against general fund interest rate risk for the taxable and tax-exempt variable rate financing program. He reviewed three safeguards--the purchase of a 10% interest rate cap, that an interest-rate reserve fund be established and funded up to the amount of \$1.5M, and that any proceeds received from Renaissance in excess of the \$1.5M will be used for payment of debt service--and recommended approval of Lehman Brothers and Artemis Capital Group as the underwriting team. William J. Garbett requested this item to be referred to the Ethics Board. Upon motion by Council Member Powers, seconded by Council Member Fiscalini and unanimously carried, Resolution No. 65754, entitled: "Resolution of the City of San Jose Approving, Authorizing and Directing Execution of Certain Financing Documents and Directing Certain Related Actions in Connection with The Hayes Mansion Improvement Project Financing", was adopted; and Resolution No. SJFA-18, entitled: "Resolution of the City of San Jose Financing Authority Authorizing the Issuance of One or More Series of Lease Revenue Bonds in the Initial Aggregate Principal Amount of Not to Exceed \$27,500,000 in Connection with Financing Certain Public Capital Improvements, Authorizing and Directing Execution of a Trust Agreement and Certain Financing Documents, Authorizing the Treasurer to Negotiate the Sale of Bonds, Approving an Official Statement, and Authorizing Other Related Actions", was adopted. Vote: 9-0-1-0-1. Absent: Shirakawa. Vacant: District 10.:

The San Jose Financing Authority portion of the meeting adjourned at 2:55 p.m.

Council Member Shirakawa returned to the Council Chambers at this point in the meeting.

**9g Adoption of a resolution setting fees for Family Camp.
[Housing & Community Services Committee referral 2/6/95 - Item 7c(6)]**

Documents filed: See Housing and Community Services Committee Report of February 6, 1995, Item 7c(6).

9g (Cont'd.)

Discussion/Action: Upon motion by Council Member Powers, seconded by Vice Mayor Johnson and unanimously carried, Resolution No. 65755, entitled: "A Resolution of the Council of the City of San Jose Fixing and Establishing a Schedule of Charges to be Paid by Persons at San Jose Family Camp, and Repealing Resolution No. 65116", was adopted. Vote: 10-0-0-0-1. Vacant: District 10.

9h Adoption of a resolution condemning the "Mobilehome Rent Assistance, Mobilehome Rent Control Initiative Statute" as deceptive to the voters and injurious to local government, and taking a position in opposition. (Mayor) (Rules Committee referral 2/15/95)

Documents filed: None.

Discussion/Action: By unanimous consent, this item was deferred to March 7, 1995..

9i Approval of award of an open purchase order with Mission Trail Garbage Company for the collection and disposal of grit and screening at the Water Pollution Control Plant in the additional encumbrance of \$65,000 for a total amount of \$140,000, and authorization for the Director of General Services to execute the purchase order. (General Services) [Deferred from 2/14/95 - Item 6e(3)]. This item renumbered from Item 6e(3).

Documents filed: Supplemental memorandum from Acting Director of General Services, Ellis M. Jones, Jr., dated February 21, 1995, recommending approval of the additional encumbrance with Mission Trail Garbage Company to provide specified services through June 30, 1995, and review and report to Council prior to the end of the fiscal year, as outlined.

Discussion/Action: Upon motion by Council Member Pandori, seconded by Council Member Powers and unanimously carried, the award of open purchase with Mission Trail Garbage Company was approved and execution of the purchase order authorized with direction to Staff to develop new specifications as outlined in the February 21, 1995 memorandum from the Acting Director of General Services, and return to Council for consideration. Vote: 10-0-0-0-1. Vacant: District 10.

FISCAL AFFAIRS

10a PUBLIC HEARING and adoption of a resolution confirming the Report of Unpaid Recycle Plus Bills and direction to place a Special Assessment against the property secured by a lien with the County Recorder. (Finance)

Documents filed: (1) Memorandum from Finance Director, John V. Guthrie, dated February 3, 1995, recommending adoption of said resolution. (2) Supplemental memorandum from Finance Director, John V. Guthrie, dated February 16, 1995, reporting on Administrative Hearing of February 14, 1995, and listing attendees. (3) Affidavit of Mailing of Notice of Delinquency and Public Hearing submitted by the Director of Finance.

Discussion/Action: Mayor Hammer opened the public hearing to consider the report on unpaid Recycle Plus bills. William J. Garbett requested the removal of the special assessment against his property; Joseph Younse spoke against the lien proceedings; and Louis Morrone stated he paid the solid waste collection services bill for his tenant, but that the occupant is low income and could be eligible for assistance. Mayor Hammer requested that Staff remove from the list the properties of Joseph Younse and Louis Morrone and that Staff work with the property owners in bringing their accounts current. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed and Resolution No. 65756, entitled: "A Resolution of the Council of the City of San Jose Confirming the Report of Unpaid Recycle Plus Bills and Direction to Place a Special Assessment Against the Property Secured by a Lien With the County Recorder", was adopted and Staff directed to remove from the Assessment List APN 43909043, Acct #101590--property owner Joseph Younse, and APN 49459037, Acct #13315--property owner Louis Morrone, and to meet with the property owners regarding their concerns. Vote: 10-0-0-0-1. Vacant: District 10.

ORAL COMMUNICATIONS

- (1) William J. Garbett addressed Council on issues related to the Administrative Hearing conducted to review Notices of Intent to Lien.
- (2) Rodrigo-Roy Hernandez, representing Santa Clara Valley Athletic Association, addressed Council on developing a multi-sports complex in San Jose.

RECESS/RECONVENE

The City Council recessed at 3:45 p.m. and reconvened at 7:08 p.m. in Council Chambers, City Hall.

On behalf of the City Council, Mayor Hammer welcomed the citizens viewing TCI Cablevision and those listening to **KLIV** Radio to the eighth in a series of pilot programs underwritten by voluntary corporate contribution. She stated Diamond Multimedia Systems, Inc. who recently relocated to San Jose has made possible through a voluntary donation the telecast of the evening session of the City Council of San Jose. She extended special thanks to Chong Moon Lee, Chairman of the Board of Directors, and William Schroeder, Chief Executive Officer of Diamond Multimedia Systems Inc., and to Robert Kieve, owner of **KLIV** News Station, for his participation in making the broadcast of the meeting available to many residents. She stated this meeting will be rebroadcast on Channel 35A at 7:00 p.m. on Wednesday, February 22, 1995, and on Sunday, February 26, 1995 at 7:00 p.m.

City Clerk, Patricia L. O'Hearn, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the below noted continuances and other actions were granted. Vote: 10-0-0-0-1. Vacant: District 10.

- 15a PUBLIC HEARING and approval of an ordinance amending Title 20 of the San Jose Municipal Code by adding Section 20.04.164 to define Director, and amending Part 4 of Chapter 20.08 to revise the procedures for revoking the legal nonconforming status for uses which create an adverse public impact and expanding the application of such procedures to additional legal nonconforming uses. (Planning)**

Documents filed: None.

Discussion/Action: This item was continued to March 7, 1995.

- 15b PUBLIC HEARING ON APPEAL OF THE DENIAL of the Conditional Use Permit for an approximately 125 square-foot drive-through retail use on a 6.15 gross acre site in the C-3 Commercial Zoning District located at the northwesterly corner of Saratoga Avenue and Prospect Road (Joseph P. Franco, Owner; Caffino, Inc., Developer). CEQA: Exempt. Staff recommends upholding Planning Commission's decision.
CP 94-07-053 - District 1
(Deferred from 1/10/95 and 1/24/95 - Item 8a)**

Documents filed: Letter from Ruth & Going, Inc., dated February 17, 1995, requesting a continuance of the subject Conditional Use Permit for six (6) months, on behalf of the applicant, Caffino Inc.

Discussion/Action: This item was continued to August 22, 1995.

- 15e PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the south side of Blossom Hill Road, 1,000 feet west of Winfield Boulevard, from A(PD) to A(PD), to allow up to 66,000 square feet of new self storage buildings on 2.4 gross acres (Herbert P. McLaughlin, Owner/Developer). CEQA: ND.
PDC 94-09-037 - District 10
(Continued from 2/7/95 - Item 15d)**

Documents filed: None.

Discussion/Action: This item was continued to March 7, 1995.

- 15h PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING for a project located on the south side of Herald Avenue, opposite Bonita Avenue, from R-2 to A(PD), to allow up to 10 multi-family attached residential units (Bennie Schulman, Owner/Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (4-2-1).
PDC 93-11-048 - District 3
(Continued from 2/7/95 - Item 15h)**

Documents filed: None.

Discussion/Action: This item was continued to March 7, 1995.

- 15j PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the northwest corner of North Capitol Avenue and Fallingtree Drive, from County to A(PD), to allow up to 152 single-family detached residential units on 25 gross acres (Frank A. Nunes, Owner; Graystone Homes, Developer). CEQA: ND.
PDC 94-11-049 - District 4**

Documents filed: None.

Discussion/Action: This item was continued to March 7, 1995.

- 15k PUBLIC HEARING ON CONFORMING REZONING for a project located on the northwest corner of Locust Street and Alma Avenue, from A(PD) to A(PD), to allow changes in the conditions of the previous zoning on .26 gross acre (George Vorgias, Owner/Developer). CEQA: Exempt.
PDC 95-01-004 - District 3**

Documents filed: None.

Discussion/Action: This item was continued to March 7, 1995.

- 15i PUBLIC HEARING ON PLANNED DEVELOPMENT PREZONING for a project located on the easterly terminus of Pleasant Knoll Drive, 600 feet east of Estate View Way, from County to A(PD), to allow up to 11 single-family detached residential units on 4.19 gross acres (Robert and Kathy Nellis, Owner/ Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval with condition for conservation easement on the riparian corridor to the satisfaction of the Director of Planning (6-0-1).
PDC 94-06-024 - District 8
(Continued from 2/7/95 - Item 15j)**

Documents filed: (1) Memorandum from the Planning Commission, dated February 3, 1995, recommending Council approve the subject rezoning with the condition that a conservation easement be created at the Planned Development Permit stage that includes the Riparian Corridor area and additional area along the southeast edge of the corridor to the satisfaction of the Director of Planning. (2) Declaration of Mailing of Notice of Public Hearing, submitted by the City Clerk. (3) Proof of Publication of Notice of Public Hearing, submitted by the City Clerk.

Discussion/Action Mayor Hammer opened the public hearing on the planned development prezoning for the subject project. There was no discussion from the Floor. Upon motion by Council Member Woody, seconded by Council Member Fernandes and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved with condition for conservation easement on the riparian corridor to the satisfaction of the Director of Planning, and Ordinance No. 24820, entitled: "Ordinance of the City of San Jose Prezoning Certain Real Property Situate on the Terminus of Pleasant Knoll Drive", was passed for publication. Vote: 10-0-0-0-1. Vacant: District 10.

15c PUBLIC HEARING ON APPEAL OF THE APPROVAL of a Conditional Use Permit for a project located at the west side of Callahan Avenue, approximately 100 feet southerly of Dailey Avenue, for a Little League field at an existing church on a 4.0 gross acre site in the R-1:B-6 and R-2 Residence Zoning Districts (St. Andrew Lutheran Church, Owner; Oak Grove Little League, Developer). CEQA: Exempt. Staff recommends upholding Planning Commission's decision. CP 93-06-018 - District 10

Documents filed: (1) Memorandum from Director of Planning, Gary J. Schoennauer, dated February 3, 1995, recommending Council uphold the decision of the Planning Commission and approve the subject Conditional Use Permit and include in its resolution the findings and conditions contained in the Planning Commission resolution. (2) Affidavit of Mailing of the Notice of Public Hearing, dated February 21, 1995, submitted by the City Clerk. (3) Correspondence from Joe Head, Ruby Hill, dated February 21, 1995, supporting the Oak Grove Little League's appeal of the CUP.

Discussion/Action: Mayor Hammer opened the public hearing on the appeal of the Planning Commission's decision. Approximately 18 speakers addressed Council, including the following who spoke in support of the appeal: Rich De La Rosa, representing both the Oak Grove Little League and St. Andrew Lutheran Church; Richard W. Wohlford, representing St. Andrew Lutheran Church; and Arun Kamboj, Oak Grove Little League President. The following citizens spoke against the appeal: David Sheets; Jeanne Anastole, representing Oak Grove Little League; Randy Torrecillai; David Petree; Gene and Donita Gallock; and Steve and Nancy Sheets. Travis Murdock, Michael Maynard, L. Fields, and Judie Phelps, representing Oak Grove Little League, spoke on various aspects of the subject. In response to Council Member Powers' question regarding the difference between the original Staff recommendation and the Planning Commission decision, Director of Planning Schoennauer stated the Planning Commission considered the results of the consultant sound study evaluating noise levels of the amplified sound/public address system; based upon the analysis of that study, Staff recommended to the Planning Commission several conditions limiting the use of amplified sound in each season and proposed times of use. He stated as part of the Planning Commission's deliberations, a concern was raised regarding spectator noise levels, and the Commission concluded that an additional sound study should be conducted during a game in which amplified sound is used and another game without the use of amplified sound. He stated the decibel levels of spectator noises measured during an actual game will be analyzed against that produced by the addition of the amplified sound/public address system. He stated the neighbors and the Planning Commission prefer, as part of the monitoring effort over the next year, an additional sound study that would measure the level of spectator noise; however, the Little League contends that that is unnecessary, as crowd noises could not

15c (Cont'd.)

be regulated in any event. He stated the data would be evaluated at the Compliance Review which is scheduled one year from approval of the Conditional Use Permit. Council Member Powers recommended approval of the original staff recommendation for one year without the additional sound study, with the Compliance Review occurring within that year. She invited the citizens to contact her Office for assistance in resolving their concerns, in the absence of the District 10 Council Member. Upon motion by Council Member Powers, seconded by Council Member Shirakawa and unanimously carried, the public hearing was closed, the appeal was denied, and Resolution No. 65757, entitled: "Resolution of the City Council of the City of San Jose Granting a Modified Conditional Use Permit, Subject to Conditions, to Use Certain Real Property Described Herein for the Purpose of Allowing a Little League Field at an Existing Church", was adopted without condition of additional sound study, for one (1) year, with a Compliance Review Hearing to be held within that year, with a report back to the City Council. In addition, neighborhood residents and Little League leadership were encouraged to work with Council Member Powers' Office until District 10 Council Member is elected. Vote: 10-0-0-0-1. Vacant: District 10.

9b Discussion and approval of the six month status report on the Youth Protection Ordinance. (Police)
(Deferred from 1/24/95 and 2/7/95 - Item 9a)

Documents filed: (1) Memorandum from City Manager Regina V.K. Williams, dated February 1, 1995, recommending actions relative to the Youth Protection Ordinance as contained therein. (2) Youth Protection Curfew Program Evaluation, dated January 1995, prepared by the San Jose Police Department. (3) Correspondence from San Jose Youth Commission, dated February 10, 1995, reporting on the Youth Protection Ordinance. (4) Undated report entitled: "Independent Observers Report, NAACP Recommendation", submitted by the NAACP. (5) Copies of overhead transparencies used in the Staff presentation.

Discussion/Action: Joined by the City Council, Mayor Hammer commended Police Chief Cobarruviaz, Sgt. Dale Morgan, and the Police Department on the excellent job done in implementing the Youth Protection Curfew Ordinance; thanked the Youth Commission and the NAACP for their participation; and extended the City's appreciation to the community-based organizations who have become partners in this Program. Chief of Police Cobarruviaz stated the City Council enacted on June 21, 1994 the Youth Protection Curfew Program, whereby minors who meet the age restrictions and who remain or loiter in public places beyond prescribed hours, could be detained by police officers. He stated the intent of the Ordinance was to reduce the probability

that minors would become victims of crime or involved in criminal acts, and to provide support services for parents and guardians. He stated the monitoring of the curfew program's operations shows that the program is reaching its intended target population and is operating as designed and should be continued and expanded to include all minors under the age of 18 years, and that 17-year old juveniles have the same curfew hours as those who are 16 years of age. Police Sgt. Dale Morgan introduced the Police Officers who assisted him in the Program--Officer Tracie Muldrow, Officer Joe Perez, and Officer Annie Nguyen--and Police Data Specialists Edgar Martinez, Susie Fong, and Joan Huntley--and thanked them for their hard work. He underscored the importance of focusing on the similarities of the Program, instead of the differences, and of educating the public on social services available to the youth of San Jose. He stated the City Council, in an effort to address the problem of increased youth and juvenile crimes of violence, on February 15, 1994 directed the Administration to develop the Curfew Ordinance, which compared to the current ordinance, incorporates an amendment to include minors under the age of 18 years. With the use of transparencies, he presented a comprehensive overview of statistical data related to gender, age, ethnicity, and other characteristics of curfew violators, as well as information related to the nature and disposition of the detentions and the impact of the curfew. He stated the curfew program is making use of three curfew centers--Willows Senior Center, opened

August 11, 1994, the Welch Park Community Center, opened September 29, 1994, and the Starbird Community Center, opened on September 2, 1994--and that the use of these centers for the curfew program has not interfered with ongoing activities. Noting the cost and benefits, he stated the funding for the six-month pilot project was realized through savings associated with frozen positions, diversion of positions, non-personal monies, and a Citywide appropriation for contract service providers. He stated the reduction in juvenile related offenses and victimizations result in direct savings in terms of fewer police events, reports, investigations, arrests, and transfer for detention to juvenile probation; furthermore, direct savings are realized by residents as the potential victims of the person or property crimes perpetrated by juveniles. In reviewing the recommendations, he stated the Police Department considers the Curfew Ordinance effective and that the program should be continued with an amendment to include 17-year old juveniles. Vera Abate, Executive Director of the Alum Rock Counseling Center, Inc., reviewed the agency's activities in providing 24-hour crisis and counseling intervention services to San Jose City youth and their families. Noting the recommendations by the Agency were distributed to the City Council, previous to the meeting, Mayor Hammer stated they will be referred to the City Attorney, the Chief of Police, and the City Manager to work with the Alum Rock Counseling Center, Inc. Sparky Harlan, Executive Director of the Bill Wilson Center, stated the Center provides shelter, counseling, and education to runaway and homeless youth, youth involved in

gang activities, and other status offenders; although the shelter has twelve state licensed beds, two are reserved for the curfew program. Noting that the Center is often at capacity, she requested approval to make available any remaining beds for curfew youth and runaways and homeless youth, and urged Council to support the recommendations presented. Paul Pereira, Vice Chair of the San Jose Youth Commission, reviewed the Commission's report and recommendations on the Youth Protection Ordinance; namely, to (1) direct the Police Department to reevaluate its hours and days of operation; (2) that an independent, objective observer be present at the centers; (3) that the City Council redirect funds to provide more direct outreach to teens, both on the streets and in the curfew centers; (4) that the City Council direct Staff to develop an appeals process by which youth who feel they are wrongfully picked up for a violation can argue that the incident be removed from any records that might be kept; (5) that the City Council direct the City Attorney to clarify the definition of *guardian*; and (6) that the City Council direct the Police Department to initiate a regional, coordinated effort to curb the increase in youth crime. In addition to the Commission's original recommendations, he asked that Council include in the reevaluation of the hours and days of operation, the closing down of centers during inclement weather; that certain information requested on the forms is irrelevant to youth curfew and should not be allowed. He stated the City Council and Police Department should discuss pro-active responses not acceptance; that teen centers should be opened and options explored to open late-night teen centers in the City; and that an appeals process is needed. Brenda Otey, San Jose Branch NAACP Monitoring Coordinator, reviewed the Association's recommendations as contained in the Independent Observers Report previously distributed to the City Council. Speaking in opposition to the Curfew Ordinance, Lawrence R. Jensen, Chairman of American Civil Liberties Union of Santa Clara Valley, recommended the statutes should be analyzed under an equal protection analysis and that the ordinance requires strict scrutiny. He stated the ordinance is an unconstitutional burden on the rights of juveniles and should not be expanded to include 17 year olds; that it is racially discriminatory in application and is inflaming racial polarization in the City; and that the ordinance is applicable primary to Latino youths. He recommended the City investigate other options that do not involve the use of the Police Department and the criminal justice system to address these issues; and that the City investigate programs in other cities that do not involve the use of curfew laws. Attorney Gayle Tiller recommended Council appoint a special advisory committee to evaluate the effectiveness of the ordinance. Ben Menor spoke in support of the ordinance and requested assistance for non-English speaking parents/guardians in understanding what the ordinance imposes as a curfew. Gerald Harrison, Anya Luke, Aaron Wilson, Sid Duran of Save Our Sons, and Ignacio Hernandez spoke on various aspects of the ordinance. Related to Mayor Hammer's question regarding arrest records kept on juveniles detained for a curfew violation, Sgt. Morgan stated no criminal records

are associated with the Program and sanctions are non-punitive. He stated the only records kept are those within the Program which are used in tracking repeat offenders; however, information is shared with the Juvenile Probation Intervention Unit, when there is a second offense, and juveniles are counseled by that Unit. Council Member Shirakawa focused his concerns on the number and percentage of Hispanic detainees, and requested that the Police Department re-enforce its efforts in reducing those statistics. He urged the Administration to explore a cross section of alternative late-night programs for youth. Noting his support for the curfew program, Council Member Diaz also pointed out the high concentration of Hispanic youth detained, and requested that the Police Department identify in their next report the actual district in which the youth are picked up, and to explore positive alternatives on a County-wide basis. He requested that the Administration explore the options recommended by the Alum Rock Counseling Center and the Bill Wilson Center and the need to provide more services to the City's youth. He requested that the Department ascertain what agencies, except the Police Department, are used in other metropolitan cities to monitor or coordinate their youth curfew program. Police Chief Cobarruviaz stated, in response to Council Member Woody, that the Youth Commission and the NAACP will continue participating in the monitoring and evaluation process of the Curfew Program, and that all the recommendations set forth during the evening's testimony will be considered by the Administration. Noting the Program emphasis has remained on community intervention, Council Member Powers requested that the Police Department present to the City Council a six-month review of the Program and effect of the curfew imposed on 17-year old juveniles. Noting the City's concern for the health and safety of the youth of San Jose, Mayor Hammer described a number of programs in existence for San Jose youth, and reiterated the City's commitment to remain creative in identifying positive alternative activities for the City's youth. Upon motion by Council Member Shirakawa, seconded by Vice Mayor Johnson and unanimously carried, the Police Department's Report on the Youth Protection Curfew Program, was accepted; and (a) the City Manager authorized to maintain the current funding level of staff support for the Youth protection Team throughout the remainder of fiscal year 1994-95; (b) consideration of funding support beyond fiscal year 1994-95 referred to the Annual Budget Process; (c) the City Attorney directed to amend related sections of the Youth Protection Curfew Ordinance to include minors under the age of 18 and to submit the proposed amendment to the City Council for approval; (d) the City Manager and the Police Department directed to provide a follow-up report on the operations and impact of the Youth Protection Curfew Program (including the proposed amendment), six months following the initial enforcement of the Amended Ordinance; (e) Staff directed to continue monitoring data compiled for the disproportionate number of minority youth versus others detained for curfew violations; and (f) recommendations from the

9b (Cont'd.)

San Jose Youth Commission, the NAACP, and the ACLU referred to the City Manager, City Attorney, and Chief of Police for review of any legal implications. In addition, the Administration was directed to continue working with the Youth Commission and the NAACP on the Curfew Program and to consider extending the hours of operation at the Centers and the funding to do so. Vote: 10-0-0-1. Vacant: District 10.

15f PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southerly corner of Great Oaks Boulevard and San Ignacio Avenue, from I to A(PD), to allow a 71,600 square foot medical office and outpatient clinic on 5.35 gross acres (Lupa Investors, Owner; Brant Companies, Developer). CEQA: Resolution No. 49286. Director of Planning recommends denial. Planning Commission recommends approval (6-0-1). PDC 94-10-045 - District 2 (Continued from 2/7/95 - Item 15e)

Documents filed: (1) Memorandum from the Planning Commission, dated January 26, 1995, recommending the Council approve the subject rezoning. (2) Memorandum from Mayor Hammer and Council Member Powers, dated February 21, 1995, recommending Council (a) approve the Planned Development Rezoning for the Veteran's Administration Clinic on the proposed site; (b) give the TD&E Committee additional recommendations regarding its non-industrial use policy consideration; and (c) direct the Administration and the City Attorney to bring back a moratorium on non-industrial uses in certain industrial zones. (3) Proof of Publication of Notice of Public Hearing, submitted by the City Clerk. (4) Correspondence from San Jose Chapter, GI Forum, dated February 6 and 10, 1995, supporting the application for a Veterans Administration Clinic at the subject site. (5) Undated correspondence from Dahl C. Phelps, supporting construction of a Veterans Clinic at subject site.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. Council Member Powers stated for the record that she (1) has closely examined the proposal and issues concerning job creation, property tax payments, revenue generation, increased regulatory requirements for industry and business community perceptions; (2) has also assessed the likelihood of finding alternative sites without jeopardizing federal funding for the project; and (3) that she has never been opposed to the Clinic but is opposed to the location. She stated the question must be answered regarding non-industrial uses in an industrial zone, however, there is also a matter of equity; namely, if the Clinic is approved, what does this say to the churches who have been seeking the use of industrially zoned land. She stated

discussions with the City Attorney and the Planning Staff have produced a concept that will allow for mixed uses in a portion of the industrial zone, while a majority of the area will remain zoned for pure industrial uses. As initially discussed, she stated the clinic will fall into a use of mixed zone, as would some churches and other non-industrial uses. She stated the local veterans community has not been served well by the process that has gone forward; the applicant entered into a binding agreement with the Veterans Administration to deliver a specific site, based on a telephone conversation with a junior staff member in the Planning Department; by not conducting their due diligence properly, the VA and applicant put the project in jeopardy. She stated she was not prepared to take that same risk. She stated she has reviewed the proposal in the context of the larger discussion over non-industrial uses in industrial areas and stated she is committed to providing a clear statement to industry about the integrity of industrial areas, and committed to treat non-industrial uses consistently and give applicants their options for locating their facilities. She thanked all those who have been involved in resolving the outstanding concerns, and asked Brant Companies, Contractor, to consider using local contractors and local union construction workers to complete the project. That said, she moved and Council Member Fiscalini seconded the motion to approve the proposed rezoning to allow the medical office and outpatient clinic, to give the Transportation, Development and Environment Committee additional recommendations regarding its non-industrial use policy consideration, and to direct the Administration and the City Attorney to bring back a moratorium on non-industrial uses in certain industrial zones. Attorney Norm Matteoni, representing the applicant and a number of veterans, addressed Council in favor of the project. Approximately 20 citizens addressed Council in favor of the proposal, including Bill Headley, Sr., representing Disabled American Veterans, San Jose #11, San Jose American League Post #250, Bicentennial Pearl Harbor Survivors Group, and South San Jose Homeowners Association; Ernest A. Glave, President, United Veterans Council of Santa Clara County; Gene Bader, State Commander, Veterans of Foreign Wars; Jack Orlove, President, Retired Officers' Association; Louis Shannon, representing Fleet Reserve Association and Pearl Harbor Associates; Norman V. Collins, representing PCC of California, Veterans of Foreign Wars #6309, and American Legion Post #217; Richard V. Martinez, Commander, American GI Forum, East Valley Chapter; Frank DeWitt, Military Order of the Purple Heart; Stanley E. Anderson, President, American Veterans of Santa Clara County, and Vietnam Veterans of America, Chapter 201; Catherine Hepner and Terry Hepner, 13th District Post Commander, American Legion; Amelia McClelland, Delegate, Veterans Affairs, Palo Alto; and Jim Lineberger, Commander, Veterans of Foreign Wars, 12th District. Upon motion by Council Member Powers, seconded by Council Member Fiscalini and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 24822, entitled: "Ordinance of the City of San Jose Rezoning Certain Real Property Situate on

15f (Cont'd.)

the Southwest Corner of Great Oaks Boulevard and San Ignacio Avenue”, was passed for publication with the Veteran’s Administration Clinic approved on the proposed site; and the TD&E Committee given additional recommendations regarding its non-industrial use policy consideration; and the Administration and the City Attorney directed to bring back a moratorium on non-industrial uses in certain industrial zones. Vote: 10-0-0-0-1. Vacant: District 10.

**9c Accept The Founding of the Pueblo Public Art Project Status Report. (Convention, Cultural and Visitor Services)
This item heard immediately following Item 15f.**

Documents filed: (1) Memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated February 6, 1995, transmitting the report and recommending acceptance. (2) Supplemental memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated February 21, 1995, transmitting photographs of the Founding of the Pueblo Public Art Project.

Discussion/Action: Mayor Hammer explained that Council action will be confined to discussion and acceptance of a status report and that no other Council action is required on the item. Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, began her presentation with the creation of the ethnically diverse Historic Art Advisory Committee and one of its objectives which is to recommend historically significant subjects for commemoration through the City’s public art program. She stated the recommendation to commemorate the founding of the Pueblo San Jose de Guadalupe was approved by the City Council in June 1991, and in 1993 the funding for the project was identified by the Redevelopment Agency. She pointed out the project is not funded by the General Fund but from a set-aside of 2% from each City or Agency Capital Project exceeding \$500,000. She reviewed the selection process, including community participation, and concluded with the panel’s recommendation to award fabrication of the Pueblo Public Art project to Wayne Healy and David Botello of East Los Streetscapers, which was approved at the December 8, 1993 Arts Commission meeting. She stated the design development of the project was influenced by a number of factors--the site, the work, and the design--which resulted in the final design of four fourteen foot tall, three-sided columns, surrounding a ceramic tile circular map, inset at grade that traces the journey of the Pobladores from Sonora Mexico to what is now San Jose. She stated the scale of work will allow it to be read by passing vehicular traffic on Market and South First Streets, but will also reward pedestrians with its rich detail and narrative content. She stated the primary review of the Program is through the annual

Public Art Workplan and the budget which is reviewed and approved annually by the Council; however, the agreement with East Los Streetscapers (ELS) calls for project review by the Urban Design Review Board as to appropriateness; no other reviews are necessary. Jerry Allen presented a comprehensive overview of the San Jose Public Art Program and its process which has resulted in an approved design of the Pueblo project. He shared with Council the goals of the Public Art Program--which is intended to promote and encourage the creation of cultural and quality works of art throughout San Jose, as well as to reflect and celebrate the histories and unique characteristics and identity of the peoples of San Jose--and commented on the history and process of the Founding of the Pueblo Project. Regarding refinements of the public art process which can be implemented by the Department, he stated the Department is committed to notify Council Members and their staffs of all public meetings during the design development and review process; and secondly, that the Department is committed, following Arts Commission approval of a design project, to make a press release and visuals of the artist's design available to the general public, which will be sent to appropriate media. He stated the Department is requesting each artist, currently contracted by the City, to amend their agreement to accommodate the new procedure; and that the Department will include the provision in future contracts. Troy Brown, Chair of the Arts Commission, spoke in favor of the public art project and in support of greater public input into the art selection process. John Ramos addressed Council on the public art project. Council devoted considerable discussion to various aspects of the issue, concentrating on the noticing process and publication of public hearings to be held, the positive and negative aspects of previewing art projects prior to fabrication, the degree of participation by the City Council in the overall process, and added a third refinement to the process which provides Council with periodic updates summarizing actions of community and Commission meetings. The motion by Council Member Pandori was seconded by Council Member Fiscalini to direct Staff, prior to contracting with the artist, to obtain photographs of revisions of the current art project to be made available to the public in a manner to be determined by Staff, after which to be reexamined by the Public Art Sub-Committee. Mayor Hammer recognized Santa Clara County Supervisor, Blanca Alvarado, who spoke in support of San Jose's Public Art Program and the established process, and urged the City Council to allow the arts program to continue as formulated without any modifications but with periodic reports to Council. She stated the ordinance was approved in 1992, however, the Pueblo San Jose de Guadalupe is the first art project to be produced by that process. Mayor Hammer stated the works of art in progress should be allowed to continue through the existing procedure, but that Staff can improve communications with the public by using Virtual Valley and the public channel to announce dates and places of public meetings. In addition to publishing the dates and times of meetings, Vice Mayor Johnson

9c (Cont'd.)

requested the inclusion of a verbal description of the art projects, always with the caveat that the proposal is a *work in progress*, and that comments are accepted on that concept until approved. Mayor Hammer reiterated comments in opposition to the motion and stated the process approved by a prior Council should not be changed. Council Member Pandori stated the approving body is the Public Arts Commission and that his intent is that the Commission retain that authority, but with visual representation released to the public prior to approval. Upon restated motion by Council Member Pandori, as seconded by Council Member Fiscalini, to delay fabrication of the art project until Staff has determined to make photographs available to the public, and after public comment to refer the proposal back to the Public Art Subcommittee, failed. Vote: 2-8-0-0-1. Noes: Diaz, Diquisto, Fernandes, Johnson, Powers, Shirakawa, Woody; Hammer. Vacant: District 10.

- 15d**
- (1) PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the north side of Story Road, opposite Roberts Avenue, from I to A(PD), to allow the uses of the I-Zoning District, including up to 190,000 square feet of commercial building area on 19.3 gross acres (Arcadia Assoc. III, Owner; K-Mart, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1). PDCSH 94-02-007 - District 7
(Continued from 2/7/95 - Item 15c)**
 - (2) Adoption of a resolution authorizing the City Manager to execute an agreement to accept a grant of real property from Arcadia Associates III of approximately 41,857 square feet of property, located between U. S. Highway 280 and Story Road, near the northerly projection of Roberts Avenue, to the City, and authorization for the Director of Public Works or designee to accept the deed. CEQA: ND. (Public Works)
[Deferred from 2/7/95 - Item 6e(12)]**

Documents filed: (1) Memorandum from the Planning Commission, dated February 3, 1995, recommending approval of subject rezoning. (2) Memorandum from Council Members Pandori and Powers, dated February 21, 1995, recommending Council direct Staff to develop policies to guide future zoning decisions regarding "big box" retailers as described therein. (3) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated January 20, 1995, recommending Council approve execution of the agreement to accept a grant of real property from Arcadia Associates III. (4) Correspondence from Davis, Cowell & Bowe, dated January 25, and February 14, 1995, requesting referral to the Planning Commission for further environmental review. (5) Declaration of Mailing of Notice of Public Hearing, submitted by the City Clerk. (6) Proof of Publication of Notice of Public Hearing, submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property and consideration of an agreement to accept a grant of real property from Arcadia Associates III. Hank Young of MacKay & Soms spoke on behalf of the applicant of the project and reported on the status of mitigation required by the Planning Commission. The following citizens spoke in opposition to the proposed project and urged Council to deny the rezoning, or refer the project back to the Planning Commission for completion of an economic analysis and the creation of better economic strategies: Ron Lind, Organizing Director of UFCW, Local 428; Stephen Stamm, Local 428; E. Dennis Hughes of United Food & Commercial Workers; and Amy Beth Dean, representing South Bay AFL-CIO Labor Council. In rebuttal, Hank Young of MacKay & Soms refuted statements about K-Mart's employment practices and substandard benefits and wages. In response to comments made regarding the economic impact analysis and its affect on the rezoning, City Attorney Joan R. Gallo advised Council that the proposed land use matter precludes any decision based on the user or employment practices of that business; however, modifications to or restrictions on the land use can be imposed by the City Council. She added that Council, as a matter of policy, has not considered economic impact reports on a site specific basis, but approval based on whether the land use is appropriate for the site. She stated Council has established neither ordinance nor policy procedure whereby a site specific economic impact report is required; however, with direction to the Administration, an ordinance can be drafted but it will not address the issues of prevailing wages. She stated the memorandum co-authored by Council Members Pandori and Powers does address the economic benefits and impacts this project may have on revenue to the City or net jobs created, but differs from a site specific analysis. Council Member Shirakawa urged K-Mart management to work with Union Labor representatives and to work with his Office in conjunction with Yerba Buena High School to develop a Youth Employment Program, and to use Union labor when constructing the facilities. For discussion purposes, the motion by Council Member Shirakawa to approve the rezoning with direction to Staff to work with K-Mart to develop signage within the context of the City's Sign Ordinance, was seconded by Council Member Diaz. In support of the motion, Council Member Diaz commented on the necessity for the City to concentrate on the big-box retail development issues and the impacts on adjacent businesses, as well as the creation of economic incentives for corporations relocating in San Jose, and to pursue with the Redevelopment Agency a retail strategy for the entire area. Speaking to the motion, Council Member Pandori stated the request for an economic analysis is consistent with the land use issue. Noting the appropriateness to review the impacts of the commercial use on other land uses, he requested that Staff continue with the economic analysis on the land use and report back to Council. In response to Council Member Woody's comments and the possibility of continuing this item pending resolution of some of the policy-related

issues raised during Council discussion, City Attorney Gallo reiterated the options available to Council: Approve the project with modifications based only on land uses, or defer the item. Council Member Johnson agreed with delaying Council action on the subject rezoning, with a referral to Rules Committee to direct Staff to provide an estimate of the time element required in completing the analysis. Regarding the time and funding of the analysis, Director of Planning, Gary J. Schoennauer, stated the process is considered a major undertaking for the City and will include an economic evaluation of a strategy and the impact big-box retailers will have on other uses. He stated approximately six months and \$50,000 to \$100,000 will be needed to complete the study; however, completion of a site specific analysis would require approximately thirty days. He pointed out for the record that several retailers have expressed an interest in locating their businesses in the City, accordingly, these also will be considered for development in the area. Commenting on the site's potential for adding new jobs for the construction of the project, potential for retail clerk jobs after completion of the facility, and K-Mart's desire to become a good neighbor and employer, Council Member Diquisto encouraged K-Mart to provide a commitment to Local 428 acknowledging the problems and indicating their willingness to become a part of the solution. Mayor Hammer acknowledged the efforts of Council Member Shirakawa to provide economic opportunities and to enhance the quality of life for the citizens of San Jose. She encouraged the City Council to make a decision on the proposed rezoning and postpone discussion on the outstanding issues. She concurred with Council Members' comments regarding the serious impacts, K-Mart's policy regarding prevailing wages, and development of standard benefit packages for employees, and urged K-Mart representatives to meet with Union Labor representatives to discuss the outstanding concerns of the parties involved. Upon motion by Council Member Shirakawa, seconded by Council Member Diaz and carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 24823, entitled: "Ordinance of the City of San Jose Rezoning Certain Real Property Situate on the North Side of Story Road, 350 Feet East of Remillard Court", was passed for publication with Staff directed to work with K-Mart to develop signage within the context of the City's Sign Ordinance; and Resolution No. 65758, entitled: "A Resolution of the Council of the City of San Jose Authorizing the City Manager to Execute an Agreement to accept a Grant of Approximately 41,857 Square Feet of Property, Located Between U.S. Highway 280 and Story Road, Near the Northerly Projection of Roberts Avenue, from Arcadia Associates III, and Authorizing the Director of Public Works to Accept the Deed", was adopted. Vote: 7-3-0-0-1. Noes: Johnson, Pandori, Woody. Vacant: District 10. Council Member Pandori stated the issues contained in his memorandum co-authored by Council Member Powers, merit a comprehensive review by the City, and that in keeping with the City's General Plan, Goals and Policies, Commercial Land Use Policy, he recommended that Council direct the Administration to develop some specific policies to guide future zoning decisions

15d (Cont'd.)

involving big box retailers in San Jose. He stated the policy should consider (1) the appropriate locations for these kind of retail developments; (2) the impacts that these developments may have on the deterioration or improvement of existing strip commercial areas and shopping centers; (3) how big box retailers may be used to complement existing commercial developments; and (4) the economic data that would be desired by the City in assessing the economic impacts of these types of projects to the City as a whole and surrounding businesses. Upon motion by Council Member Powers, seconded by Council Member Pandori and unanimously carried, the recommendations as contained in the February 21, 1995 memorandum from Council Members Pandori and Powers to develop policies to guide future zoning decisions regarding "big box" retailers as described, was approved and Staff directed to prepare a response on a comprehensive workplan to be transmitted to Rules Committee for appropriate disposition. Vote: 10-0-0-0-1. Vacant: District 10.

**15g PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on northeast corner of Santa Teresa Boulevard and Liska Lane, from I to A(PD), to allow up to 116 single-family detached residential units and 136 single-family attached residential units and a 4.5 acre public park on 32 gross acres (IBM Corporation, Owner; Kaufman and Broad, Developer). CEQA: ND. Director of Planning recommends denial. Planning Commission recommends approval with conditions that prior to City Council hearing, Staff is to develop conditions for the zoning that place requirements for deed restrictions for the affordable units, assures that the affordable units are built concurrently with the market rate units and the project is to be redesigned based on Staff recommendation which eliminates the sound wall along Santa Teresa Boulevard (5-0-1-1).
PDC 94-10-040 - District 2
(Continued from 2/7/95 - Item 15g)**

Documents filed: (1) Memorandum from the Planning Commission recommending approval of the subject rezoning with the condition that the applicant and Staff work together to (a) revise the site plan to address the City's concerns as outlined in the Staff Report; (b) develop language that defines how the attached and detached units can be built simultaneously while maintaining that at any given time during the construction the 15% affordable requirement is met; and (c) develop language, with regard to the affordability restrictions, that will be placed on the deed restrictions for the affordable units. (2) Proof of Publication of Notice of Hearing, submitted by the City Clerk.

15g Cont'd.)

Discussion/Action: Mayor Hammer opened the public hearing. There was no discussion from the Floor; however, Vice Mayor Johnson disqualified herself from the discussion and decision on the item, as her husband is employed by IBM. Upon motion by Council Member Powers, seconded by Council Member Diquisto and carried, the public hearing was closed, Planning Commission recommendation approved with conditions, and Ordinance No. 24824, entitled: "Ordinance of the City of San Jose Rezoning Certain Real Property Situate on the Northeast Corner of Santa Teresa Boulevard and Liska Lane", was passed for publication. Vote: 8-1-0-1-1. Noes: Pandori. Disqualified: Johnson, due to family member employed by IBM. Vacant: District 10.

CLOSED SESSION REPORT

Disclosure of Closed Session Action of February 21, 1995 reported by City Attorney, Joan R. Gallo:

1. Case Name: Watt v. Burnside
Adverse Party or Parties: Watt
Substance of Litigation: Inverse condemnation action where a private irrigation system leaked into a City sewer trench and ultimately flooded plaintiff's property.

Council Vote: Ayes: Diaz, Diquisto, Fernandes, Johnson, Pandori, Powers,
Shirakawa, Woody; Hammer
Noes: None.
Absent: Fiscalini
Disqualified: None.
Vacant: District 10.

ORAL COMMUNICATIONS

Roy F. Que-Heath addressed Council on public safety for school children, educators, and employees of public school districts, and requested that Council oppose judicial action which would allow students to carry weapons.

ADJOURNMENT

The Council of the City of San Jose adjourned at 1:05 a.m.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK

RT\ 02/21/95\ Cncl Min